J. P. Stevens and Co., Inc. *and* Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC. Cases 11-CA-8067 and 11-CA-8465

20 October 1983

DECISION AND ORDER

On 5 March 1982 Administrative Law Judge James M. Fitzpatrick of the National Labor Relations Board issued his Decision in the above-entitled proceeding and, on the same date, the proceeding was transferred to and continued before the Board in Washington, D.C. Thereafter, all parties filed exceptions and/or cross-exceptions to all or part of the Administrative Law Judge's Decision.

On 13 October 1983 J. P. Stevens and Company, Inc., herein called the Respondent; Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, herein called the Union; and the General Counsel of the National Labor Relations Board entered into a Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order based upon the Order set forth in the Administrative Law Judge's Decision. The parties withdrew all exceptions and cross-exceptions to the Administrative Law Judge's Decision filed with the Board.

Having considered the matter, the Board approves the Settlement Stipulation and the exceptions and cross-exceptions filed by the parties are withdrawn.

As no exceptions to the Administrative Law Judge's Decision remain,

The National Labor Relations Board adopts the recommended Order of the Administrative Law Judge as modified in the Settlement Stipulation, and orders that the Respondent, J. P. Stevens and Co., Inc., Wallace, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, as the exclusive collective-bargaining representatives of employees in the unit found appropriate below for purposes of collective bargaining. The bargaining unit is

> All production and maintenance employees employed at the Employer's Carter plant, Holly plant, and warehouses at Wallace, North Carolina, including plant clerical employees, watchmen, computer programmer in the dye house, electrical technician, and plant driver; excluding office clerical employees, professional employees, cloth store clerk, managerial employees, guards and supervisors as defined in the Act.

(b) Refusing to bargain in good faith by unilaterally, and without prior notification and bargaining with the Union, changing terms and conditions of employment of employees within said unit, including, but not limited to, unilateral publication or implementation of personnel policies and procedures, or unilateral granting of general wage increases. However, nothing herein shall be construed as requiring Respondent to vary or abandon any economic benefit or term and condition of employment which its employees at its Wallace facilities, or any other facilities, would otherwise be entitled to receive.

(c) Disciplining or discharging employees pursuant to personnel policies and procedures unilaterally publicized or implemented as aforesaid.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist the aforesaid Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection, and to refrain from any or all such activities.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

(a) Upon request, bargain with the aforesaid Union, as the exclusive representative of all employees in the appropriate unit described above, with respect to rates of pay, wages, hours of employment, or other conditions of employment, and with respect to the personnel policies and procedures publicized at Wallace, North Carolina, 1 October 1978, 1 December 1978, and 1 February 1979, and the general wage increase at Wallace, North Carolina, of 9 July 1979, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Offer to Gloria Jacobs immediate and full reinstatement to her former position, or, if that position is not available, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings in the manner set forth in the section entitled "The Remedy."

(c) Preserve and, on request, make available to the Board or its agents for examination and copying all personnel records and memoranda regarding Gloria Jacobs and all records necessary to analyze the amount of backpay due under the terms hereof.

(d) Expunge from the personnel files of Gloria Jacobs and all other employees of Respondent at Wallace, North Carolina, all adverse entries made pursuant to personnel policies and procedures not negotiated with the Union.

(e) Post in conspicuous places, including all places where notices to employees customarily are posted at Respondent's Wallace, North Carolina plants copies of the attached notice marked "Appendix."[1] Copies of the notice will be furnished by the Regional Director for Region 11 and, after being signed by Respondent's representative, shall be posted immediately upon receipt thereof and maintained by Respondent for 60 consecutive days thereafter. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply herewith.

[1] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Act gives you, as employees, certain rights, including the right:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through a representative of your choosing

To act together for collective bargaining or other mutual aid or protection

To refrain from any or all of these things.

Accordingly, we give you these assurances

The Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, is the recognized collective-bargaining representative of our hourly employees at Wallace, North Carolina.

WE WILL NOT take action affecting wages, hours, and working conditions of such employees, including publicizing personnel policies and procedures and general wage increases, without negotiating first with the Union. However, nothing herein shall be construed as requiring us to vary or abandon any economic benefit or term and condition of employment which our employees would otherwise be entitled to receive.

WE WILL NOT discipline or discharge employees pursuant to personnel policies and procedures which have not been negotiated with the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights under the National Labor Relations Act.

WE WILL offer Gloria Jacobs her old job at Wallace and pay her for loss of earnings with interest; WE WILL remove from her personnel file and the personnel files of all Wallace employees any adverse notations made pursuant to personnel policies and procedures which we should have negotiated with the Union.

J. P. STEVENS & CO., INC.

DECISION

STATEMENT OF THE CASE

JAMES M. FITZPATRICK, Administrative Law Judge: This Employer refuses to recognize or bargain with the Union, although the Union made continuing demands for such recognition, and persists in this refusal pending appellate review of a Board decision and order that its duty to bargain arose at an earlier date (February 19, 1975). In the meantime, between the time the duty to bargain arose and the Board's decision and order, the Employer publicized employee work rules, discharged an employee for violating a work rule, and gave employees a general pay increase. I find herein that the publicized rules and the pay raise were additional aspects of a continuing unlawful refusal to bargain and that the discharge also was an unfair labor practice.

These cases involve J. P. Stevens & Co., Inc. (the Respondent, the Employer, or Company) and Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC (the Union). In the earlier case (*J. P. Stevens & Co.*, 244 NLRB 407 (1979), enfd. 668 F.2d 767 (5th Cir. 1982), the National Labor Relations Board (the Board) found that, even though the Union had obtained valid authorization cards from a majority of employees in an appropriate bargaining unit at the Employer's facilities in Wallace, North Carolina, it lost out in a subsequent Board-conducted election because of the Employer's unfair labor practices prohibited by the National Labor Relations Act, as amended (the Act). The Board set aside the election for those reasons and, pursuant to the standards set forth in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), found the Union to be the majority representative of the employees as of February 19, 1975, and ordered the Company to bargain with the Union upon request effective that date. The Company sought review by the United States Court of Appeals for the Fourth Circuit, the Board filed a cross-application with the same court for enforcement of its order, and the Union intervened seeking additional remedies. The court granted enforce-

ment of the Board order and remanded the case to the Board for implementation of the remedies it had ordered.

The present proceedings were initiated on December 29, 1978, when the Union filed additional unfair labor practice charges against the Respondent in Case 11-CA-8067. These charges were amended June 7, 1979. On July 10, 1979, the Union filed separate charges against the Respondent in Case 11-CA-8465. Then on September 10, 1979, the charges in Case 11-CA-8067 were again amended. On January 11, 1980, a Board complaint issued in Case 11-CA-8465. This complaint was amended on January 15, 1980, and on January 31, 1980, the two cases (Cases 11-CA-8067 and 11-CA-8465) were consolidated and a consolidated complaint issued. On May 2, 1980, an amended consolidated complaint issued in the two cases. The Respondent duly answered each complaint including the final one which it answered on May 12, 1980.

The issues presented by the pleadings are whether the Respondent committed unfair labor practices prohibited by Section 8(a)(1) and (5) of the Act by various unilateral changes in terms and conditions of employment, including a general wage increase, for employees at its Wallace, North Carolina, facilities without bargaining with the Union respecting them. An additional issue is whether the discharge of employee Gloria Jacobs for violating a work rule violated Section 8(a)(1) of the Act because, as is alleged, institution of the rule was among the unilateral changes which the Company should have, but admittedly did not, bargain about with the Union. These issues were heard before me at Clinton, North Carolina, on May 19 and 20, 1980, and at Wilimington, North Carolina, on July 8 and 9, 1980.

Based on the entire record, including my observation of the witnesses, and consideration of the briefs of the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

It is undisputed that the Respondent, a Delaware corporation, operates approximately 74 textile plants in various States, including plants (the Carter plant, the Holly plant, and warehouses) at Wallace, North Carolina, the only facilities directly involved in these proceedings, where it is engaged in the manufacture and sale of textile products. During the calendar year preceding issuance of the complaint, a period representative of its operations, the Respondent received at its Wallace plants directly from points outside North Carolina goods and raw materials valued over $50,000 and shipped from those plants directly to points outside North Carolina products valued over $50,000. The Respondent is an employer engaged in commerce within the meaning of the Act. It is also undisputed that the Union is a labor organization within the meaning of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Established Facts*

The complaint alleges, inter alia, and the answer denies, that the production and maintenance employees at the Respondent's Wallace, North Carolina facilities constitute an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act.[1] Similarly, it is alleged and denied that a majority of the employees in that unit designated the Union as their collective-bargaining representative about February 19, 1975, and since then the Union has been the exclusive collective-bargaining representative of employees in that unit with respect to wages, hours, and working conditions and other terms and conditions of employment by virtue of Section 9(a) of the Act. It is similarly alleged and denied that the Union has had a continuing request to the Company to bargain collectively. None of these issues are litigable in the present proceeding, the Board, with Court approval, already having determined them in the earlier proceeding referred to above. Thus, the Board found the bargaining unit to be appropriate, found the Union enjoyed majority representative status therein as of February 19, 1975, and found the Union made continuing demands for recognition and bargaining. These demands in effect have been reiterated through the charges in the present matter as well as by the Union's continuing participation in this litigation in support of its right to bargain. In addition, with respect to the 1979 annual general wage increase, which is at issue here as an alleged unilateral change, the Union on June 19, 1979, made a specific written request to the Company to bargain.

B. *Issues for Litigation*

The General Counsel and the Union contend that the Respondent engaged in the additional unlawful refusals to bargain by unilaterally instituting three groups of changes in working conditions and by the general wage increase, and further violated Section 8(a)(1) by discharging Gloria Jacobs for violating a rule which was one of the unilateral changes. The alleged changes in working conditions occurred on three dates, October 1, 1978, December 1, 1978, and February 1, 1979. Jacobs was discharged March 12, 1979. The general wage increase was given July 9, 1979.

In its answer the Respondent asserts generally that the complaint fails to state a claim on which relief can be granted. With respect to all alleged unilateral changes and the general wage increase, the Respondent admits it has not bargained with the Union and asserts it had no duty to do so and that it has a good-faith doubt that the Union represents an uncoerced majority of employees in the unit.[2] The Respondent admittedly discharged Jacobs for violating a work rule alleged in the complaint as a unilateral change, but the Respondent contends this was sufficient cause for discharge and that the work rule in-

[1] The complaint describes the bargaining unit as follows:
All production and maintenance employees employed at the Employer's Carter plant, Holly plant, and warehouses at Wallace, North Carolina, including plant clerical employees, watchmen, computer programmer in the dye house, electrical technician, and plant driver; excluding office clerical employees, professional employees, cloth store clerk, managerial employees, guards and supervisors as defined in the Act . . . .

[2] As to the good-faith doubt issue there is no evidence to support such defense other than the results of the election which was set aside.

volved did not constitute a change in working conditions.

C. *The Duty to Bargain*

Since 1974 the Respondent has followed a practice of announcing new benefits for employees simultaneously in all nonunion plants. Between 1974 and 1979 this method was used on 10 occasions. It was also used to publicize the working conditions which the General Counsel alleges here to be unilateral changes. The Respondent refers to these matters as personnel policies and procedures. These were arranged into three groups to be publicized on three different dates by means of employee meetings at which tape slide presentations were shown followed by question and answer periods. Summaries of each group were then posted on bulletin boards subsequent to each meeting. In this manner personnel policies and procedures in Group 1, which included those dealing with probationary period, attendance policy, perfect attendance awards, leaves of absence, employee suggestions and complaints, and disciplinary procedure and rules of conduct, were publicized on October 1, 1978. Group 2, which included those dealing with bulletin boards, seniority, jury duty, personnel files, employment and induction, and Christmas gifts, were publicized on December 1, 1978. And Group 3, which included those dealing with call-in pay, reporting pay, funeral pay, exit interviews, nondiscrimination, and educational courses, were publicized on February 1, 1979. For purposes of these publicizings the Respondent considered the Wallace plants as nonunion. Without at this point particularizing these various rules, it may be noted that the Respondent contends that none of them was entirely new, although some were modifications of existing policies, and it contends that some involved no change whatsoever.

In granting the general wage increase on July 9, 1979, the Respondent again applied it in all nonunion plants, considering the Wallace plants as nonunion, but excluding the Roanoke Rapids plants where it recognized the Union. The Respondent contends that in giving the increase it acted in accordance with its past practice of following the industry trend in which the large textile mills of various companies generally announce wage increases at about the same time.

The Respondent's defense with respect to the personnel policies and procedures as well as the general wage increase is that they involved no real change from the status quo ante and therefore required no bargaining with the Union. The difficulty with this defense is that with respect to the Wallace employees the Board has already ordered the Company to bargain with the Union effective February 19, 1975, and its duty to bargain about all mandatory subjects of bargaining carries forward from that date. There is no contention here that the subjects included in the personnel policies and procedures and the matter of wages were not mandatory subjects of bargaining, and I find that they were. Although the Union has a continuing request to bargain, the Company has still not recognized it or bargained on any matters respecting Wallace employees. Each day that passes is a further failure to fulfill this duty. The fact that the Board's decision announcing this obligation was until recently pending appeal did not relieve the Respondent from that obligation. *J. P. Stevens & Co.*, 186 NLRB 180 (1970), enfd. 78 LRRM 3116 (5th Cir. 1971); *Quaker Tool & Die, Inc.*, 169 NLRB 1148 (1968). It is true that the Board decision issued on August 20, 1979, after the events which are the basis for the complaint in this case. But the Respondent had long been on notice of the possibility of a Board finding which might impose a duty to bargain as of an earlier date. The original charges of violations of Section 8(a)(1) and (5) of the Act were filed April 14, 1975, the complaint alleging a failure by the Respondent to meet its bargaining obligations issued January 20, 1977, and after a hearing Administrative Law Judge Joel Harmatz issued his decision on the matter on March 22, 1978. Thus, the Company was litigating its duty to bargain, which ultimately was found by the Board, at the very time it was publicizing the personnel policies and procedures and granting the general wage increases involved here. In *J. P. Stevens & Co.*, supra, 186 NLRB at 183, the Board said:

> Respondent has misconceived the nature of the decision and order of the Board and mistaken an enforcement proceeding for the original decision. Where a Respondent will not abide either the Trial Examiner's decision or the Board decision, it becomes necessary for the Board to secure enforcement of its decision and order through action of an appropriate circuit court of appeals and such enforcement is granted by the court on a showing of substantial evidence. The operable matter is the facts as found by the Trial Examiner and the Board and the facts determine under the law whether a violation has occurred. In a refusal-to-bargain case, the facts determine when the duty to bargain was present and when the refusal occurred. The violation takes place at that time, not later when a Trial Examiner spells out the facts and the violation or when the Board affirms or makes such a finding. The Board decision is an affirmance that the duty existed at the prior instant and that Respondent violated the Act by negating its duty.
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> Where the duty exists whether or not such has been articulated by a Trial Examiner, the Board, or a court, Respondent acts at its peril if it does not meet that duty. On occasion the Section 10(b) limitation might pass canceling that peril, but otherwise Respondent must act in accordance with the duty imposed by the Act.

Inasmuch as the Company's duty to bargain dates from February 19, 1975, it should have bargained all along about mandatory subjects of bargaining. This is not a case where the parties are already negotiating and some event or action occurs which arguably should have been negotiated, or arguably formed part of the status quo ante. Here the Respondent refuses to bargain about all bargainable topics. It is immaterial whether change occurred. The Respondent is bound to bargain about them whether or not there is change. In this sense the present proceeding is in some measure redundant to the previous

one. Nevertheless, the General Counsel and the Charging Party are entitled to whatever redress is available where, as here, unfair labor practices are continuing. The Respondent's defense erroneously assumes that absent a change in the status quo with respect to the personnel policies and procedures or as to wages, it does not violate the Act. See *Master Slack*, 230 NLRB 1054 (1977), enfd. 618 F.2d 6 (6th Cir. 1980).

D. *The Specific Personnel Policies and Procedures Involved*

Although it may not be strictly necessary to analyze the extent to which changes were made in working conditions and wages, such analysis does assist in determining the extent to which employee collective rights have been impeded and in determining an appropriate remedy. The General Counsel and the Union urge that all of the alleged unilateral changes set forth in the complaint involve some measure of change which has significance under the Act. The Respondent's overall defense is that virtually no significant changes occurred. However, in the taped presentation which prefaced publication of the personnel policies and procedures, the Respondent described them as being "updated," thus suggesting some change, and then described them as for the most part not new to the employees and only reworded for clarity. The evidence shows that some matters were substantially changed while others were not.

1. Changed policies and procedures

a. *Perfect attendance awards*

Prior to October 1, 1978, the Respondent maintained a policy of encouraging perfect attendance of employees at the Wallace plants with a program called "Wally Wallace" by which weekly, monthly, quarterly, and yearly awards were given to employees for perfect attendance. Although not explicated in the record, it is implicit in the position of the parties that these awards were a form of recognition which did not involve material benefit for the employee other than a soft drink or an item of food. As of October 1, 1978, the Respondent modified the existing perfect attendance policy by granting employees with 1-year perfect attendance a gift or a day off, and for additional years of perfect attendance granting additional gifts and days off. The explanatory presentation which preceded implementation of the rules posted October 1, 1978, explained this new policy to the employees in the following language:

> After 1 full year of Continuous Perfect Attendance, you can select an appropriate valuable gift or receive 1 day off with pay. For 2 thru 4 years of Perfect Attendance, a more valuable gift or 2 days off may be selected each year. For 5 thru 9 years an even more valuable gift or 3 days off will be offered each year. And for 10 years or more Perfect Attendance, you can choose an expensive gift or 5 days off.

I find the new policy on perfect attendance was a significant change from the old one.

b. *Discharge for failure to report*

Prior to October 1, 1978, the company policy as to attendance provided in part as follows, "Employees who are absent without sending word for 7 consecutive calendar days will be automatically dropped from the payroll and will be considered as having resigned." The parties stipulate that under the new rule, "Employees who are absent for any reason without sending word for 3 consecutive days . . . will be discharged." Assuming that this stipulation means 3 consecutive working days and considering that the plant operates on a schedule of 5 or 6 workdays in a week, it is obvious that the Respondent altered the rule applicable to employees who are absent and do not report in and that this was a significant change in the employees' terms and conditions of employment.

Finally, the new attendance policy, in contrast to the old, provides that employees who are "excessively absent, even for excused reasons" may suffer disciplinary action including discharge. This is plainly a stricter policy than the earlier one.

c. *Excused and unexcused absences*

The Respondent's previous absentee policy was set forth in its supervisors' manual in general terms without specifying which absences were excused or which unexcused and without specifying the penalty for either type. Broad discretion was allowed supervisors in administering the policy and no firm limit was set on the number of absences an employee could accumulate. In practice the most important requirement was that the employee give advance notice to the supervisor of an expected absence together with the reason for the absence. Almost any excuse was acceptable. The new rule publicized October 1, 1978, was more explicit in that it defined excused and unexcused absences and indicated penalties for unexcused absences accrued within a 6-month period. It also reduced the number of consecutive days of allowable absences from seven to three. Excessive absences, whether excused or not, subjected the employee to discipline, including discharge. Supervisors no longer could exercise broad discretion in excusing absences. The new rule permitted excused absences in only four categories, personal illness, death in the family, serious illness in the immediate family, and transportation problems. All other absences were unexcused unless they were on designated holidays, during scheduled vacations, for jury duty, for approved leaves of absence, or for funeral leave. In sum, the new policy was more rigid and less flexible than the one it replaced.

d. *Progressive disciplinary procedure*

Although in the past the Respondent used a disciplinary procedure, the policies and procedures publicized October 1, 1978, included a disciplinary procedure which differed from the old in a number of ways. Under the new procedures supervisors exercised considerably less discretion than under the old system. Although both listed reasons for which employees could be disciplined, the old identified 14 reasons for which an employee

could be disciplined and 10 for which the employee would be discharged. Under the new procedures an employee could incur discipline for 24 reasons and discharge for 15 reasons. One of these new reasons which could result in discipline or discharge was the use of profane, abusive, indecent, or threatening language. The new procedure provided supervisors with guidelines for the imposition of discipline or discharge. Thus, for certain specific types of infractions such as drinking on the job, fighting, or stealing, discharge following investigation was mandatory. For certain lesser infractions a written warning was imposed. And for even more minor infractions a verbal warning was imposed and if the infraction was repeated a written warning, and if repeated a third time within 6 months discharge resulted. The severity of the penalty and in some cases the progression of heavier penalties for repeated infractions depended on the type of the infraction. For purposes of this progressive discipline, warnings became unusable after 6 months.

Prior to October 1, 1978, the supervisors' manual listed certain specific grounds for immediate discharge. The newly publicized procedures also listed the identical or similarly worded grounds and in addition listed the following grounds which had not previously been listed:

> Failure to report to work for 3 consecutive working days without notifying the Company of the circumstances.
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> Failure to report to work on the first working day following the expiration date of a leave of absence.
>
> Immoral or indecent conduct on company property.
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> Unauthorized leaving of company premises during working time.
>
> Gross negligence resulting in serious injury to another employee or damage to company property.
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> Working for another employer while on a leave of absence will normally result in immediate discharge. There may, however, be circumstances in which exceptions are justified, such as an employee doing limited work temporarily in a family owned business, while recuperating from a personal illness. Therefore, an employee who works for another employer while on a leave of absence is subject to immediate discharge, depending upon the circumstances.

Similarly, although the newly publicized list of infractions which could lead to discipline less than immediate discharge in some respects tracks the old list in the supervisors' manual, certain of this type of infraction are newly listed, as follows:

> Unauthorized operation of machines, tools or equipment.
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> Unauthorized posting of material or defacing materials on company bulletin boards.
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> Excessive time on breaks or taking unauthorized breaks.
>
> Trading shifts without permission.
>
> Violation of no-solicitation-distribution rule.
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> Poor housekeeping, creating or contributing to unsanitary conditions.
>
> Excessive waste of materials or supplies.
>
> Unauthorized starting or stopping work early.
>
> Failure to wear required or protection equipment.
>
> Insubordination to company supervisors.
>
> Sleeping on the job.
>
> Use of profane, abusive, indecent or threatening language.

In certain other ways also the new procedures publicized disciplinary policies not previously announced. These include a prohibition of an employee having another employee present or participating in a warning meeting on the ground that such an event is confidential. This particular item, however, is not specifically covered in the complaint.

Although even prior to October 1, 1978, employees were required to report to their supervisors all accidents however slight, there was no announced policy imposing discipline for excessive accidents. By contrast, under the newly publicized procedures, employees with excessive accident records could be subjected to discipline and even discharge.

e. *Suggestions and complaints*

The complaint alleges that on October 1, 1978, the Company implemented a formal grievance procedure. The policies and procedures publicized at that time included a category designated employee suggestions and complaints which, according to Personnel Director Cottle, was merely a statement of what already existed. But, as shown by the evidence, what was new about the publicized procedures was the formalization of set channels for complaints as well as suggestions which now were coupled in the same system. Employee testimony indicates lack of uniformity if not confusion respecting the earlier channels available for employee complaints. Thus, B. J. Jenkins and Royce Williams testified credibly that previously complaints could not be pressed beyond the complaining employee's immediate supervisor. Gloria Jacobs, on the other hand, recalled that at one time department heads held gripe sessions with groups of employees and, although that practice had fallen into disuse, she felt free to discuss job problems with anyone in management up to and including the plant manager. The new procedure set the channels for pursuing complaints and suggestions with the caveat, however, that if an employee felt a matter could not be discussed in the normal progression of management, the employee was free to take it up with a higher level of management. Thus, while the newly publicized procedure does not appear to confer greater rights or impose greater obligations than previously, an institutionalization resulted which amounted to a change.

f. *Employee access to personnel file*

Previously company practice was to allow employees access to their own personnel files on a limited basis, although there apparently was no general announcement

or general knowledge among employees that such a right existed. Under that practice an employee could request from the personnel office and would be allowed to see such specific items in the personnel file as the employee requested. The policies and procedures publicized on December 1, 1978, conferred on employees the right to request and see their entire personnel file. This was a change which enlarged employee rights.

g. *Seniority*

In the policies and procedures publicized on December 1, 1978, the Company altered its seniority system by adding restrictions to the established procedures for filling job vacancies. Under this system vacancies were filled by a bidding procedure under which the job went to the bidding employee with the most seniority with the single limitation that an employee could not bid for a vacancy in the employee's current classification on the same shift. To this limitation the procedures publicized on December 1, 1978, added the limitation that a bidding employee had to have served at least 90 days in the bidding employee's current job classification and an employee who had transferred from one classification to an equal or lower job classification could not bid on a vacancy in the employee's old classification until a year after the transfer from that job. In these specific ways the existing seniority system was changed.

h. *Funeral pay*

The policies and procedures publicized on February 1, 1979, included a modification of the existing funeral pay policy. The existing policy limited employee's right to paid leave for attending funerals to funerals of certain listed members of the employee's family. The new policy enlarged this list of relatives to include the funerals of grandparents and grandchildren.

i. *Reporting pay*

The new procedures publicized February 1, 1979, also increased the employee benefit known as reporting pay by guaranteeing employees at least 4 hours' pay on occasions that they reported for work and were assigned to a job other than their own. This was a change in that the guarantee of such pay was enlarged from 2 hours to 4 hours' pay.

2. Unchanged policies and procedures

Although the complaint alleges that all the policies and procedures mentioned therein were changes from the status quo ante, the General Counsel's brief concedes that the wording of certain ones was not substantially changed. These include the rule against working for another employer while on leave of absence, the employee suggestions and complaints procedures, the verbal warning policy, the ban against obtaining and conveying confidential information (all publicized October 1, 1978), the policy disqualifying employees laid off before September 25 from receiving company Christmas gifts that year (publicized December 1, 1978), and the rules on call-in pay and on reimbursement for educational courses (both publicized on February 1, 1979). Prior to October 1, 1978, these rules appeared in the supervisors' handbook. Even though they remained substantially unchanged, the General Counsel contends that this publicizing was in legal effect a change and in derogation of the Respondent's obligation to bargain with the Union. Counsel relies on *Hedstrom Co.*, 235 NLRB 1193, 1208 (1978); *Wilkinson Mfg. Co.*, 187 NLRB 791, 796 (1971); and *Southland Paint Co.*, 157 NLRB 795, 796 (1966), modified 394 F.2d 717 (5th Cir. 1968).[3]

With regard to the rule against working on another job while on leave, the General Counsel and the Union contend that prior to October 1, 1978, the rule was generally unknown among the employees. In support of this contention they rely on the testimony of one time employee Gloria Jacobs that in 1976 Plant Manager James Wellons gave her a leave of absence so she could go to the hospital for an operation. Counsel for the General Counsel then asked her this question, "Did he [Wellons] inform you of any restrictions concerning the leave of absence?" She replied as follows, "Well, he just told me, you know, however much time that I be sick, as long as I was under doctor's care, to let him know that I had come back." Counsel then asked her, "Did you ever learn that there were restrictions on employees when there were restrictions on taking leaves of absence?" to which she replied, "No, I didn't, he didn't tell me about it, you know; he just told me." It is not at all certain that Jacobs' testimony relates to the prohibition on working another job during a leave of absence. On the other hand, Personnel Manager Jack Cottle, who was a rank-and-file employee at Wallace before becoming personnel manager, testified credibly that prior to October 1, 1978, a general announcement of the rule had not been made, so far as he knew, and that he did not know whether or not it had been posted. But he said the employees knew of the rule, that he knew of it when he was an hourly employee, and that as personnel director he discussed it probably a dozen times when employees asked for leaves of absences. Considering the totality of the evidence on this rule I find that the General Counsel has failed to carry the burden of his contention that prior to October 1, 1978, the rule was not generally known among the employees. The testimony of Jacobs does not so establish and, even though there is an annual turnover rate of 25 to 30 percent in the approximately 900 employees at Wallace, that evidence alone does not warrant the inference that employees generally were ignorant of the rule. In so finding, I do not hold that no violation of Section 8(a)(5) was involved because, as already noted, the Respondent was already obligated to bargain with the Union. *Master Slack*, supra.

The authorities cited by the General Counsel are persuasive for finding that mere publication without change of preexisting rules circumvents and undermines the Union. I so find even though certain special circumstances relied on by the Board in those cases do not appear here. In the *Hedstrom* case there were "obvious and substantial differences" between the old and new rules and the timing of the promulgation of the new rules

[3] Enforcement granted as to the 8(a)(1) and (3) violations found, but denied on other grounds as to the 8(a)(5) violation found.

indicated they were designed to circumvent and undermine the union as bargaining agent. A similarly persuasive element of timing is not present in the fact situation of the present case. In *Wilkinson* there was a real difference between the old and the new rule. And in *Southland* the Board keyed its finding to the circumstances therein, specifically the timing of the publication of the rules soon after the union demanded recognition. In *Southland* the Board stated (157 NLRB at 796):

> With respect to the alleged failure to bargain concerning plant work rules, the Respondent admitted that, on January 27, 1965, it published among its employees such rules without giving prior notice to, or bargaining with, the Union. Respondent contended, however, *inter alia*, that it merely reduced to writing and, to avoid misunderstanding, published existing rules. Although the record does not establish the prior existence of each of the rules, we find it unnecessary, in the circumstances herein, to segregate the old from the new or revised rules and to determine whether the latter, or any of them, constituted mandatory subjects for collective bargaining. Suffice it to say that the timing of Respondent's writing and publication of the rules, which admittedly had not theretofore been reduced to writing, soon after the Union demanded recognition and bargaining, coincided with, and became a part of, Respondent's overall and continuing conduct aimed at undermining the Union's strength and of retaliating against its employees for selecting the Union. In these circumstances, and in view of its admitted refusal to recognize and bargain with the Union since March 24, 1964, we find that Respondent's unilateral promulgation and publication of plant work rules was in derogation of its obligation to bargain and, therefore, violated Section 8(a)(5) and (1) of the Act.

Although the court of appeals denied enforcement of the Board's 8(a)(5) finding for other reasons, the Board's language is persuasive for the instant case. As in *Southland*, there is no question here but that mere publication of the policies and procedures was part of "Respondent's overall and continuing conduct" of not bargaining with the Union. In this sense, and in spite of some factual differences between the present matter and Southland, publication here was a specific manifestation of that refusal to bargain and a further derogation of the Union's representative status.

E. *The Discharge of Gloria Jacobs*

As noted above, one of the work rules included in the policies and procedures publicized October 1, 1978, provided for the discharge of employees accumulating four or more unexcused absences within a 6-month period. It is undisputed that on March 12, 1979, employee Gloria Jacobs was discharged for violating that rule and that she has not since been reinstated. As found elsewhere herein, the publicizing and subsequent implementation of the rule violated Section 8(a)(1) and (5) of the Act. That being so, the discharge of Jacobs and the subsequent failure to reinstate her also violate Section 8(a)(1) and (5) of the Act because they constitute a further extension of the unlawful refusal to bargain and thereby threaten, coerce, and restrain employees in the exercise of their rights under Section 7 of the Act. *Wellman Industries*, 248 NLRB 325, 340 (1980); *Boland Marine & Mfg. Co.*, 225 NLRB 824 (1976); *Master Slack*, supra.

F. *Company Defense of the Personnel Policies and Procedures*

The Respondent defends its publication of the personnel policies and procedures on grounds of fairness and legal necessity. It points out that in an industrial concern such as Stevens, employing in excess of 40,000 employees, a publicized system of rules and regulations affecting the employees is important to assure evenhanded treatment of employees throughout the enterprise system. Under the preexisting system in which no generally publicized personnel policies and procedures existed, supervisors enjoyed broad discretion in dealing with employees. Supervisory exercise of this authority precipitated the filing of numerous unfair labor practice charges. The Respondent's corporate director of employee relations, H. E. Greene, testified, ". . . for a long time prior to October 1, 1978 this Company had been inundated with unfair labor practice charges having their genesis in supervisory discretion." Some of the Board proceedings which followed these charges led to court decisions critical of the Company's lack of written rules governing employee conduct. In *NLRB v. J. P. Stevens & Co.*, 563 F.2d 8, 15–17, 19, 21, and 23–24 (2d Cir. 1977), cert. denied 434 U.S. 1064 (1978), the court, in holding the Respondent in civil contempt, was pointedly critical of the Respondent's lack of such rules, including the situation at the Wallace plants presently involved, and directed the Company to formulate appropriate written rules for its employees. According to the Respondent's brief in the present matter, the court's order called for a $100,000 fine to the Respondent and up to $5,000 fine to an individual supervisor, and this precipitated a corporate decision by the Respondent to adopt new policies and procedures for its entire system which would eliminate much of the broad discretion of supervisors. The personnel policies and procedures at issue here resulted.

Although the record does not indicate precisely when this corporate decision was made, it apparently was between February 21, 1978, when the Supreme Court denied certiorari in the Second Circuit case and October 1, 1978, when the publicizing of the personnel policies and procedures began. In its brief the Respondent notes that at the time the corporate decision was made to install these new policies, the Board had not yet issued its decision in the underlying case which is the predicate to the present proceedings (244 NLRB 407) and which issued August 20, 1979. Of course the Respondent was on notice of the possible result in that case because the Administrative Law Judge's decision had issued March 22, 1978, as a result of a complaint issued January 20, 1977, initiated by unfair labor practice charges filed April 14, 1975. According to the Respondent's counsel, the Respondent was faced with a dilemma whether to

treat its Wallace facilities as a union or a nonunion plant. According to the Respondent's brief, "Respondent concluded that it had no alternative but to implement the policies at Wallace the same as it did at its other plants." Counsel claims this was a good-faith response to the directives of the Second Circuit and was in line with the Company's longstanding past practice of making benefit changes at all plants at the same time.

Counsel for the Union points out in his brief that this is a disingenuous position because the policies and procedures were not implemented at the Roanoke Rapids plant where the Respondent recognizes the Union. In fact the Respondent by ignoring the Union at Wallace and implementing the policies and procedures there, treated those plants as nonunion plants which was a continuation of its historical opposition to the Union.

It is true the Respondent was faced with a dilemma, but the Respondent's brief misstates it. The real dilemma was not whether it should or should not implement personnel policies and procedures in any particular plant. The dilemma was whether it should or should not recognize the Union. Nothing in the Second Circuit's decision referred to above required the Respondent to continue its refusal to recognize the Union at Wallace. The gravamen of the present complaint is not that the Respondent publicized its personnel policies and procedures but rather that it did so unilaterally thereby undercutting further the Union's position as bargaining representative. The Respondent took the risk that ultimately it would not prevail in the prior proceeding and that the Union would ultimately be held entitled to recognition as representative of the employees. Now the Respondent has lost this gamble and, as found by the Board, it should have been recognizing the Union at Wallace since February 19, 1975. With respect to the personnel policies and procedures publicized in October and December 1978 and in February 1979, it should also have recognized the Union, notified it respecting the policies and procedures, and bargained with it on request. *J. P. Stevens & Co.*, 186 NLRB 180, supra; *Quaker Tool & Die, Inc.*, supra.

G. *The Wage Increase*

As already noted, the Respondent's duty to recognize and bargain with the Union antedates the events of this case, including the wage increase of July 9, 1979. Section 8(d) of the Act contemplates that bargaining shall include "wages." The Respondent's contention that in effect it fulfilled its bargaining obligations respecting the wage increase is dealt with hereinafter. Apart from that contention, it is undisputed that the Respondent did not bargain with the Union about the wage increase. The main issue here is whether the July 9, 1979 increase was an additional manifestation of the Respondent's ongoing refusal to bargain. I find that it was and that it tended to further undercut the Union's representative status.

In this regard the Respondent argues firstly that the wage increase was not a change in the status quo ante which could trigger a duty to bargain. It offered evidence that in granting the increase it adhered to its past practice of following the textile industry trend regarding annual wage increases and its own practice of announcing such increases system wide. The difficulty with this defense is that the conclusion to be drawn from these facts already has been decided adversely to the Respondent with respect to similar increases in 1975 and 1976 in a case involving its Roanoke Rapids plant. *J. P. Stevens & Co.*, 239 NLRB 738, 754–757, 770 (1978), enfd. in pertinent part 623 F.2d 322 (4th Cir. 1980). There, on facts similar to those in the present case, the Board found the granting of general wage increases violative of Section 8(a)(1) and (5) of the Act. Relying on that precedent I find here that the general wage increase of July 9, 1979, at Wallace violated Section 8(a)(1) and (5) of the Act. Additional circumstances support this finding. As shown by the testimony of the Respondent's witness Greene, its corporate policy does not require that it follow the industry lead in wage increases, it being free to follow the industry or not as it sees fit. Nor, when other employers in the industry grant a raise, is the Respondent bound by the amounts of its competitors' increases. According to Greene, although it is of importance to follow the industry trend in wages, the Respondent's decisions in this regard are also affected by what "the economy of our particular company will permit." It is also clear from the record that there is no certainty that an increase by the Respondent in any particular year will match what it gave in prior years. And, as shown by the fact that in the past the Respondent has granted increases at different times of the year, there is no certainty that increases will be given at the same time each year. Thus, in spite of the industry wage pattern, the Respondent's increases are not "purely automatic and pursuant to definite guidelines" as indicated by the court's rationale in *NLRB v. Allis-Chalmers Corp.*, 601 F.2d 870, 875 (5th Cir. 1979). The present situation is similar to that in *Mosher Steel Co.*, 220 NLRB 336 (1975), enfd. 532 F.2d 1374 (5th Cir. 1976), where the Board found that a pay increase violated Section 8(a)(1) and (5) of the Act. In *Mosher*, the Board (at 338) found that the "yearly general increase was neither 'guaranteed' nor fixed either in terms of amount or in timing but rather depended on a vote of the board of directors and of the Company's overall economic posture. Consistent with a finding that the grant of a general wage increase involved the exercise of a large measure of business judgment and discretion is the record evidence that over the past several years general increases have been granted in months other than June or July, having been granted twice in a single year, and having varied in amount."

In its brief the Respondent contends that it is not obligated to bargain respecting the wage increase at Wallace because through laches and waiver the Union has lost the right to bargain on that subject. The Respondent bases its argument on the undisputed facts that in its on going negotiations with the Union for employees at its Roanoke Rapids plants it kept the Union advised of what it was doing in its nonunion plants (which included the Wallace facilities) respecting a general wage increase pursuant to the industry trend in the spring and summer of 1979. In keeping the Union informed the Respondent was following the order of the Board on December 12, 1978 (239 NLRB 738, 739), respecting the bargaining at Roanoke Rapids to

(c) Give prompt notice to the Union of Respondent's decision to announce or institute system wide changes in employee benefits; produce upon request all information relevant thereto for purposes of collective bargaining, prior to announcement or implementation of such changes in benefits on a company wide basis; and afford the Union an opportunity effectively to negotiate regarding similar or identical contemplated changes in such employee benefits for the bargaining unit at the Roanoke Rapids plant.

Evidence in the present record indicates the Company provided the Union with such information at negotiating sessions in Roanoke Rapids on March 16, April 18, and May 8, 1979, in letters to the Union on May 30 and 31, 1979, and at negotiating sessions on June 5, 6, and 7, 1979. It is apparent from these communications, as it is from the Board's order quoted in part above, that the furnishing of this information was for use in the negotiations at Roanoke Rapids with respect to the terms and conditions of those employees only. There is no basis for inferring, nor does the Respondent contend, that at any time it recognized and bargained with the Union respecting employees at the Wallace facilities. On the contrary, the Respondent has consistently refused to bargain with the Union respecting those employees even though the Union has had an outstanding and continuing demand to bargain on their behalf. There was nothing in the circumstances under which the information was supplied to the Roanoke Rapids negotiations to suggest that the Company was retreating from this position or in any way recognizing the Union beyond Roanoke Rapids. The standoff between the Union and the Company in which the one maintained a continuing demand for bargaining and the other maintained its adamant refusal to bargain remained unimpaired. Nothing had occurred which required the Union to reiterate its demand.

On June 15, the Respondent announced the general systemwide increase in wages would take place on July 9. On July 14 the Union requested the Respondent to bargain about the increase at Wallace in a telegram reading as follows:

Re: Wallace Plant, Wallace, N.C.

As the majority representative of your employees in the above named plant we request that you meet and bargain with us regarding the 1979 Annual General Wage Increase.

The Respondent contends this demand was untimely because it came after the Company's decision to grant the general wage increase and because the Union had been kept informed by the Company as the decision developed. According to the Respondent, the Union had a duty to "timely request bargaining on the subject" and, according to the Respondent, did not do so. The Respondent relies on the Board's decision in *Citizens National Bank of Willmar*, 245 NLRB 389, 389-390 (1979), where the Board said,

> It is well established that it is incumbent upon a union which has notice of an employer's proposed change in terms and conditions of employment to timely request bargaining in order to preserve its right to bargain on that subject. The union cannot be content with merely protesting the action or filing an unfair labor practice over the matter. . . . . We therefore conclude that, having failed to exercise its right to demand bargaining over the issue, the Union may not now effectively claim that Respondent unlawfully refused to bargain. . . . [Footnote omitted.]

Willmar, however, is not persuasive precedent for the proposition for which the Respondent cites the case because there the employer and the union were engaged in bargaining at the time the employer took unilateral action about which the union was fully informed and the union made no real effort to bring the matter into the bargaining. The Board found that the union there "did not have any discussion with Respondent concerning such change, did not request that Respondent rescind the change, and did not request that Respondent bargain with the Charging Party (the Union) concerning this matter." The circumstances in the present case are altogether different because the Respondent consistently rejected any bargaining relationship with the Union respecting Wallace employees and nothing in its conduct could reasonably be construed as alerting the Union to a change whereby the Respondent would participate in such bargaining. I find that the Union's June 19 request to bargain about the wage increase at Wallace was a timely request, albeit unnecessary in view of its existing continuing request to bargain. By making such additional request, the Union did not waive or wipe out the validity of its prior request.

The Respondent also argues in effect that the Union waived its right to bargain over the wage increase at Wallace because knowing of the intended increase in the nonunion plants of the Respondent, "it used that knowledge for propaganda purposes," and in a union publication claimed credit for the increase in the nonunion plants. This contention is without merit because the evidence does not establish a waiver. The July 1979 issue of The Stevens Worker, a union publication, contained a news story to the effect that in the bargaining at Roanoke Rapids the Company's offer of a 7-1/2-percent wage increase was not accepted by the union negotiating committee, with the result that the Company increased its offer to 8-1/2 percent. The story went on to say that, "The Company announced that Stevens workers in other mills would also benefit from the increased offer made to the ACTWU committee in Roanoke Rapids." The Respondent contends that by this story the Union claimed credit for the increase in the nonunion plants and therefore the Union is not entitled to bargain about that matter. But for the Union to claim that its bargaining in Roanoke Rapids had some impact in other plants is neither a waiver of its right to bargain at other locations and in other bargaining units nor an assertion that it in fact has bargained for those other units on the matter. The evidence here shows beyond doubt that there in fact was no bargaining respecting the Wallace plants, neither the Company nor the Union understood it was bargaining with respect to Wallace, and neither the Company

nor the Union understood that the other was waiving its historical position respecting representation and bargaining at Wallace.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices of the Respondent set forth in section II, above, occurring in connection with the operations described in section I, above, have a close and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2) and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed at Respondent's Carter Plant, Holly Plant and warehouses at Wallace, North Carolina, including plant clerical employees, watchmen, computer programmer in the dye house, electrical technician, and plant driver; excluding office clerical employees, professional employees, cloth store clerk, managerial employees, guards and supervisors as defined in the Act.

4. On or about February 19, 1975, a majority of the employees of the Respondent in the unit described above designated and selected the Union as their representative for the purposes of collective bargaining with the Respondent.
5. At all times since February 19, 1975, and continuing to date, the Union has been the representative for the purposes of collective bargaining of the employees in the unit described above, and by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of the employees in said unit for the purposes of collective bargaining with respect to wages, hours and working conditions, and other terms and conditions of employment.
6. Commencing on or about February 19, 1975, and continuing to date, the Union has requested, and is requesting, the Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive bargaining representative of all employees of the Respondent in the unit described above.
7. The Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing personnel policies and procedures for employees in the above unit on October 1 and December 1, 1978, and February 1, 1979, without prior notification to or consultation with the Union.
8. The Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally granting a general wage increase to employees in the above unit on July 9, 1979, without consultation with the Union about the increase and while continuing its general refusal to recognize or bargain with the Union as the representative of employees in that unit.
9. The unfair labor practices found above affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, I recommend that it be ordered to cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act. Inasmuch as the unfair labor practices found herein are a continuation of the Respondent's established policy respecting employee rights protected by the Act, a broad cease-and-desist order precluding the Respondent from "in any other manner" interfering with, restraining, or coercing employees in the exercise of their rights to self-organization is warranted.

As to affirmative action, the Respondent should, on request, bargain with the Union about terms and conditions of employment at Wallace and specifically about the personnel policies and procedures and the wage increase involved in this case. The General Counsel urges additionally that the personnel policies and procedures be rescinded, but makes no similar request respecting the wage increase. The Union asks that those personnel policies and procedures which benefit employees be left in place and only those which do not benefit employees be rescinded, and further asks that the wage increase be left untouched. The Board traditionally orders that unlawful unilateral actions by an employer be rescinded, except for those which benefit employees, and further orders bargaining with the Union. In the present matter, bargaining appears to be the best available vehicle for achieving the remedial goal. The main thrust of the complaint is aimed at the unilateral manner in which the Respondent acted rather than at the substance of the actions taken. None of the parties wants the wage increase upset because all agree it is an employee benefit. Many of the personnel policies and procedures also are arguably beneficial in some way to employees. This record, however, does not adequately demonstrate the beneficial or nonbeneficial attributes of these numerous rules and to leave such determination to the compliance stage of this proceeding might delay resolution of a subject uniquely suitable for bargaining. In the particular circumstances of this case, including the impact of the Second Circuit's contempt decision on the publication of personnel policies and procedures, it seems preferable to use that vehicle. For these reasons I do not recommend that the Respondent be ordered to rescind the personnel policies and procedures or the wage increase. Even though, as the Respondent argues, it may have in part implemented and publicized them in response to the directions of the Second Circuit, it is clear the court did not intend that the Respondent do so in violation of its bargaining obligations. Therefore, bargaining respecting those policies

and procedures should not be barred by the court's mandate.

As to Gloria Jacobs, I recommend that she be offered immediate and full reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other benefits and privileges, and that she be made whole for any loss of earnings incurred as a result of being discharged on March 12, 1979, with backpay to be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and with interest as set forth in *Isis Plumbing Co.*, 138 NLRB 716 (1962), and *Florida Steel Corp.*, 231 NLRB 651 (1977). I further recommend that the Respondent be required to preserve and make available to Board agents, on request, all pertinent records and data necessary in analyzing and determining whatever backpay may be due. I also recommend that the Respondent be ordered to expunge from the personnel files of all Wallace employees, including Jacobs, all adverse entries made pursuant to the personnel policies and procedures involved herein. The Union asks that all disciplinary actions taken in enforcement of the personnel policies and procedures involved be ordered revoked and the employees involved be made whole. This relief is not recommended. It seems substantially beyond the scope of the complaint. Other than Jacobs, no employee so adversely affected was named in the complaint. The General Counsel does not seek such relief. Moreover, such questions are susceptible to resolution in bargaining.

Further, since this case is in significant measure a continuation of the prior proceeding, *J. P. Stevens & Co.*, 244 NLRB 407 (1979), enfd. 668 F.2d 767 (5th Cir. 1982), the Respondent should, for the reasons set forth by the Board and the court in that matter and also because the Respondent's policy toward the Union is systemwide, take in the present matter the additional affirmative actions found appropriate there. These include reimbursement to the Union for reasonable and necessary organizational expenses,[4] reimbursement to the Board and the Union for reasonable costs and expenses in the present litigation, the posting of an appropriate notice with a copy mailed to each employee in all plants and given to each supervisor at Wallace, the reading of the notice at all plants, union access to bulletin boards at all plants, equal time for union representatives to address employees, access to plants where Board elections are scheduled for union representatives to address employees, periodically furnishing the Union with current lists of employee names, addresses and classifications at each plant, union access to plant nonwork areas, and notice to the Board's Regional Director respecting compliance.

The Union seeks other additional remedies, including the ordered extension of bargaining at Wallace for 2 years and the establishment of interim grievance and arbitration procedures there during bargaining. The Union argues that its past bargaining experience with the Respondent at Roanoke Rapids and Statesboro, where the Respondent engaged in unlawful bargaining, demonstrates that bargaining at Wallace will consume more than a year and additional time should be ordered. I conclude, however, that, as a matter of policy, it would be imprudent to announce in advance a time measure for bargaining or at this juncture to anticipate that the Wallace bargaining necessarily will be attenuated. As to the requested order for grievance and arbitration procedures, the mechanism suggested would require an order codifying the sum of the Union's collective-bargaining rights, a technique which risks inadvertent and troublesome omissions. Further, the remedy sought would necessarily involve the Board in an unwarranted intervention in the bargaining process and is rejected on that ground as well. *H. K. Porter Co. v. NLRB*, 397 U.S. 99 (1970). For these reasons I do not recommend these additional remedies sought by the Union.

[Recommended Order omitted from publication.]

[4] With interest as prescribed in *Florida Steel Corporation*, supra.